IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

WP(C).No. 16012 of 2007(F)

OS.59/2002 of SUB COURT, VADAKARA
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PETITIONER:

A.K.RAJAMANI, S/O.GOPALAN NAMBIAR,
AGED 44 YEARS, CLERK, PUNJAB NATIONAL BANK,
KUTHUPARAMBA, THALASSERY TALUK.

BY ADV. SRI.C.P.PEETHAMBARAN

RESPONDENT:

A.M.ASOKAN, S/O.GOPALAN NAMBIAR,
AGED 53 YEARS, VANI NIVAS, P.O.AZHIYOOR,
AZHIYOOR AMSOM DESOM, VATAKARA TALUK.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 16012 OF 2007

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Dated this the 28rd day of May, 2007.

J U D G M E N T

This writ petition is preferred against the order in I.A.1076/06 in O.S.59/02 of the Sub Court, Vadakara. The I.A. is one filed under Order IX R 13 of the C.P.C. for setting aside the exparte decree. The suit is one for realisation of more than 5 lacks of rupees and the suit was decreed set exparte. It was contended before the Court that the defendant was laid up, so he was unable to attend the Court that resulted in passing of the exparte decree. The Court found that an opportunity has to be given to the defendant to put forth his case on merits. Therefore, it allowed the application to set aside the exparte decree, but imposed a condition of Rs.20,000/- to be deposited before the trial court. It relied upon the decision of this Court in 2006 (1) KLJ 1 and AIR 1973 Kerala 28 which empowers the Court to pass conditional orders directing the defendant to deposit at least part of the amount as a condition precedent to the exparte decree. Therefore, one cannot find fault with the trial court but it has also to be stated that the trial court found that there are some valid

ground for the defendant to keep away from the Court on the relevant date. I feel interest of justice can be met by directing the petitioner herein to furnish security for Rs.20,000/-instead of depositing Rs.20,000/- before Court. Therefore, the order under challenge is slightly modified and it is ordered that the petition will stand allowed on the petitioner furnishing security for a sum of Rs.20,000/- and for the said purpose petitioner is granted one month's time from today. Execution proceedings, if any, shall also be kept in abeyance till the said period.

The writ petition is disposed of as above.

M.N. KRISHNAN, JUDGE.

ul/-